



UNITED STATES PATENT AND TRADEMARK OFFICE

ck

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,166	03/10/2004	Johan Thevelein	Q80427	3449

23373 7590 04/07/2006

SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER

JOIKE, MICHELE K

ART UNIT PAPER NUMBER

1636

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/796,166	THEVELEIN ET AL.	
	Examiner	Art Unit	
	Michele K. Joike, Ph.D.	1636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,10,12,14-23,38 and 40-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-7,9,10,12,14-23,38 and 40-62 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-6, 42-50 and 60-61, drawn to a process for obtaining yeast strains conserving stress resistance in the presence of fermentable sugars, and claims 7, 9-10, 12, 14, 38, 40-41, 51-59 and 62, drawn to an industrial isolated yeast strain of the fil phenotype classified in class 435, subclass 254.21.
- II. Claims 1-6, 42-50 and 60-61, drawn to a process for obtaining yeast strains conserving stress resistance in the presence of fermentable sugars, and claim 15, drawn to strain PVD1150=M5 fil1, classified in class 435, subclass 254.21.
- III. Claims 1-6, 42-50 and 60-61, drawn to a process for obtaining yeast strains conserving stress resistance in the presence of fermentable sugars, and claim 16, drawn to strain KL1=W303 fil2, classified in class 435, subclass 254.21.
- IV. Claims 1-6, 42-50 and 60-61, drawn to a process for obtaining yeast strains conserving stress resistance in the presence of fermentable sugars, and claim 17, drawn to strain FD51=HL86 fil300, classified in class 435, subclass 254.21.
- V. Claims 1-6, 42-50 and 60-61, drawn to a process for obtaining yeast strains conserving stress resistance in the presence of fermentable

sugars, and claim 18, drawn to strain FDH16-22=HL822 fil300, classified in class 435, subclass 254.21.

- VI. Claims 1-6, 42-50 and 60-61, drawn to a process for obtaining yeast strains conserving stress resistance in the presence of fermentable sugars, and claim 19, drawn to strain AT25=S47 fil400, classified in class 435, subclass 254.21.
- VII. Claims 1-6, 42-50 and 60-61, drawn to a process for obtaining yeast strains conserving stress resistance in the presence of fermentable sugars, and claim 20, drawn to strain AT28=S47 fil500, classified in class 435, subclass 254.21.
- VIII. Claims 1-6, 42-50 and 60-61, drawn to a process for obtaining yeast strains conserving stress resistance in the presence of fermentable sugars, and claim 21, drawn to strain AT251, classified in class 435, subclass 254.21.
- IX. Claims 1-6, 42-50 and 60-61, drawn to a process for obtaining yeast strains conserving stress resistance in the presence of fermentable sugars, and claim 22, drawn to strain AT252, classified in class 435, subclass 254.21.
- X. Claims 1-6, 42-50 and 60-61, drawn to a process for obtaining yeast strains conserving stress resistance in the presence of fermentable sugars, and claim 23, drawn to strain AT254, classified in class 435, subclass 254.21.

The inventions are distinct, each from each other for the following reasons:

Inventions I-X are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the same method can be used to obtain the different yeast strains. Although the yeast strains have the same general fil phenotype, they have different genotypes and characteristics that make them appealing for bread making. Any strain with the fil phenotype could be produced by this method.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele K. Joike, Ph.D. whose telephone number is 571-272-5915. The examiner can normally be reached on M-F, 9:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Irem Yucel, Ph.D. can be reached on 571-272-0781. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michele K Joike, Ph.D.
Examiner
Art Unit 1636


DAVID GUZU
PRIMARY EXAMINER